

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

BP West Coast Products, LLC,  
Atlantic Richfield Company, and  
Intalco Aluminum Corporation

Docket No. CP03-30-000

ORDER AMENDING SECTION 3 AUTHORIZATION  
AND PRESIDENTIAL PERMIT

(Issued June 10, 2003)

1. On December 18, 2002, BP West Coast Products, LLC (BP West Coast), Atlantic Richfield Company (ARCO) and Intalco Aluminum Corporation (Intalco) (collectively "applicants") filed an application to amend a Presidential Permit and authorization under Section 3 of the Natural Gas Act (NGA) for border crossing facilities used to import natural gas supplies at a point on the United States/Canadian border near Sumas, Washington. The amendments are requested to reflect the acquisition of ARCO by BP's parent, BP p.l.c.,<sup>1</sup> and the transfer of ARCO's interest in the border crossing facilities to BP.

2. The Commission has reviewed the applicants' proposal and finds that it is not inconsistent with the public interest since the requested amendments are necessary to authorize the continued operation of the border crossing facilities to receive authorized imports of Canadian gas supplies. Therefore, we will grant the applicants' requests subject to the conditions discussed herein.

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<sup>1</sup>BP's parent, BP p.l.c., is a London based holding company of petroleum, natural gas, and petrochemical groups. Prior to January 1999, the company was registered as the British Petroleum Company p.l.c. Following a merger, the company took the name BP Amoco p.l.c. In April 2000, BP Amoco p.l.c. bought ARCO and in May 2001, BP Amoco p.l.c. changed its name to BP p.l.c.

**Background**

3. In 1989, the Commission granted ARCO and Intalco<sup>2</sup> NGA Section 3 authorization and a Presidential Permit for the subject border crossing facilities, which were constructed by ARCO and Intalco to import Canadian gas supplies for use in Washington State as fuel at ARCO's oil refinery to produce gasoline and at Intalco's smelting plant to produce aluminum ingot.<sup>3</sup> Canadian gas supplies are transported in Canada by Westcoast Energy Inc., to the border crossing facilities where the gas enters the 30.7-mile Ferndale Pipeline, which was constructed by ARCO and Intalco in conjunction with the border crossing facilities.<sup>4</sup> However, based on ARCO's and Intalco's representations that the Ferndale Pipeline would be used solely to transport imported gas supplies to be used as fuel in ARCO's and Intalco's plants in Washington State, the Commission found that the Ferndale Pipeline would not transport gas in interstate commerce and therefore was not subject to the certificate requirements of Section 7 of the NGA.<sup>5</sup>

4. BP is a limited liability company organized under the laws of the State of Delaware. BP's parent BP p.l.c. acquired ARCO on April 18, 2000. As part of a corporate restructuring, ARCO's refining and marketing assets became assets of BP on January 1, 2002. The transferred assets included ARCO's interests in the subject border crossing facilities, Ferndale Pipeline and oil refinery near Ferndale, Washington. ARCO remains a duly organized Delaware corporation, but now it, like BP, is an indirectly, wholly owned subsidiary of BP p.l.c.

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<sup>2</sup>Intalco, a Delaware corporation, is a wholly-owned subsidiary of Alumax Inc., a wholly-owned subsidiary of Alcoa Inc.

<sup>3</sup>49 FERC ¶ 61,294 at 62,106 (1989).

<sup>4</sup>The border crossing facilities and the Ferndale Pipeline have a design capacity of approximately 105,000 Mcf per day. Id.

<sup>5</sup>Id. at 62,109.

5. BP has obtained blanket authorization from the Department of Energy/Office of Fossil Energy (DOE/FE) to import gas through the subject border crossing facilities. BP's current import authorization for 25 Bcf of natural gas extends through July 1, 2004.<sup>6</sup>

6. Intalco's parent Alcoa Inc. also has blanket authorization from DOE/FE to import gas through the subject border crossing facilities. Alcoa Inc.'s current import authorization is for up to 15 Bcf of natural gas from Canada and extends through July 1, 2004.<sup>7</sup>

7. The applicants' proposal would reflect a corporate reorganization by amending the Presidential Permit and NGA Section 3 authorization for the border crossing facilities to reflect BP's acquisition of ARCO's interest in the facilities.

8. The applicants state that no additional facilities are proposed by this application, nor do they seek to change any of the terms and conditions in either the Section 3 authorization or the Presidential Permit issued for these facilities. BP and Intalco state it was due to an oversight that an application was not filed, as required by Section 153.9(a) of the Commission's regulations,<sup>8</sup> for an amended Presidential Permit and amended Section 3 authorization prior to the January 1, 2002 corporate restructuring. They state that as soon as they became aware of the oversight, the application was prepared and filed as soon as practicable.

### **Notice and Interventions**

9. Public notice of the application in Docket No. CP03-30-000 was published in the Federal Register on January 6, 2003 (Vol. 68, No. 3 Fed. Reg. 2003), with motions to intervene and protests due by January 21, 2003. No motions to intervene or protests have been filed.

### **Consultation with Secretaries of State and Defense**

10. On March 18, 2003, the Commission sent copies of the application and a draft Presidential Permit to the Secretary of State and the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State dated May 9, 2003, and the Secretary of Defense dated April 3, 2003, indicate no objection to the issuance of an

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<sup>6</sup>DOE/FE Order No. 1794, FE Docket Nos. 02-44-NG and 00-23-NG (July 2, 2002).

<sup>7</sup>DOE/FE Order No. 1768, FE Docket No. 02-21-NG (April 18, 2002).

<sup>8</sup>18 C.F.R. § 153.9(a).

amended Presidential Permit to reflect the corporate reorganization resulting in the transfer of ARCO's interest in the subject border crossing facilities to BP.

### **Discussion**

11. The Commission has jurisdiction over the siting, construction and operation of natural gas import and export facilities under Section 3 of the NGA.<sup>9</sup> In view of the corporate restructuring resulting in the transfer of ARCO's interest in the border crossing facilities to BP, amended authority pursuant to Section 3 of the NGA and an amended Presidential Permit are necessary to authorize continued operation of the subject border crossing facilities to receive imports of Canadian gas supplies authorized by DOE/FE. Further, as stated above, the Commission has consulted with the Secretary of State and the Secretary of Defense, and neither has indicated any objection to the issuance of the amended Presidential Permit to be held by BP and Intalco.

12. The application states that no additional facilities will be constructed. Further, BP and Intalco state that they will accept an amended Presidential Permit that makes operation of the subject border crossing facilities subject to the same conditions set forth in the original Presidential Permit.

13. In determining whether to approve the proposed siting and construction of the subject border crossing facilities in 1989, the Commission's staff prepared an environmental assessment (EA) of the non-jurisdictional Ferndale Pipeline as well as the jurisdictional border crossing facilities.<sup>10</sup> The EA addressed construction of the border crossing facilities and the pipeline facilities, land use, revegetation of disturbed areas, erosion control, federally listed threatened and endangered species, cultural resources, stream-crossing methods, wetlands construction techniques and alternatives to the proposed project. Based on the EA in the 1989 proceeding, the Commission concluded that if the proposed facilities were constructed in accordance with the application as well as the conditions recommended in the EA, approval of the proposed siting, construction and operation of the border crossing facilities would not constitute a major federal action significantly affecting the quality of the human environment.

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<sup>9</sup>The Commission's authority to perform functions with respect to facilities for the importation and exportation of natural gas was delegated by the Secretary of Energy in Delegation Order No. 0204-112, 49 Fed. Reg. 6684 (Feb. 22, 1984). See Yukon Pacific Corporation, 39 FERC ¶ 61,216 (1987).

<sup>10</sup>49 FERC ¶ 61,294 at 62,111-12 (1989).

14. In view of the applicants' assurances that no new facilities will be constructed and that BP's acquisition of ARCO's interest in the border crossing facilities will not alter in any way the operation of the facilities, the Commission finds that no environmental concerns are raised by the present application to reflect that corporate reorganization by amending the existing NGA Section 3 authority and issuing an amended Presidential Permit to allow BP to assume Atlantic's rights and obligations under those authorizations. For the same reasons, the Commission finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

15. In view of the above considerations, the Commission finds that approval of the applicants' requests is consistent with the public interest and therefore will grant the applicants' requests.<sup>11</sup> However, Article 9 of the Presidential Permit will be revised consistent with current Commission policy and the draft permit submitted to the Secretaries of State and Defense. Article 9 of the 1989 Presidential Permit made the Permittees subject to a condition, consistent with the Commission's policy at the time, that would require the Permittees to remove the authorized facilities within such time period specified by the Commission following termination, revocation, or surrender of the Permit. Article 9 of the amended Presidential Permit will be revised to reflect the Commission's current policy of deferring any decision regarding the removal of authorized facilities until such decision becomes necessary. This policy reflects the Commission's conclusion that it will be better able to determine whether the abandonment of facilities in place is environmentally preferable to removal of the facilities when the facilities are no longer being used.<sup>12</sup> The amended Presidential Permit is attached as the appendix to this order.

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<sup>11</sup>As discussed above, the applicants state that it was an oversight that their application was not filed prior to the January 1, 2002 effective date of the transfer of ARCO's interests in certain facilities, including the subject border crossing facilities, to BP. As the applicants acknowledge, Section 153.9 of the Commission's regulations provides that prior Commission approval is necessary for the transfer of facilities authorized under Section 3 of the NGA. 18 C.F.R. § 153.9. Further, Article 8 of the 1989 Presidential Permit states that neither the Permit nor any of the facilities covered by the Permit may be voluntarily transferred. Based on the Commission staff's review and recommendation, the Commission finds, in its discretion, that there is no need in this instance for further investigation or enforcement action. However, the Commission emphasizes that it takes seriously any company's failure to comply with the Commission's regulatory conditions making the transfer of facilities or interests therein subject to the Commission's prior approval. The Commission will take appropriate enforcement action in any situation where it determines such action is warranted.

<sup>12</sup>West Texas Gas, Inc. 101 FERC ¶ 61,058 at 61,200 (2002).

16. At a hearing held on June 4, 2003, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and in consideration thereof.

The Commission orders:

(A) The Presidential Permit for the border crossing facilities described herein is amended to be held by BP and Intalco, subject to the conditions discussed in this order and as set forth in the amended Presidential Permit in the appendix to this order.

(B) The NGA Section 3 authorization for the border crossing facilities described herein is amended to authorize BP and Intalco to operate and maintain such facilities for the importation of natural gas at the United States/Canadian border.

(C) BP and Intalco shall sign and return the Testimony of Acceptance of all the provisions, conditions, and requirements of the amended Presidential Permit to the Secretary of the Commission within thirty days of the issuance of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

Appendix

AMENDED PERMIT AUTHORIZING BP WEST COAST PRODUCTS, LLC AND  
INTALCO ALUMINUM CORPORATION TO OPERATE AND MAINTAIN NATURAL  
GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED  
STATES AND CANADA

FEDERAL ENERGY REGULATORY COMMISSION  
Docket NO. CP03-30-000

(Issued June 10, 2003)

BP West Coast Products, LLC(BP), Atlantic Richfield (ARCO), and Intalco Aluminum Corporation (Intalco), corporations organized and existing under the laws of the State of Delaware, filed in Docket No. CP03-30-000 on December 18, 2002, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, seeking amendment of the Presidential Permit issued on December 7, 1989, to ARCO and Intalco to authorize BP's succession to ARCO's interest, rights and obligations under the Presidential Permit.<sup>13</sup> In support of this request, BP and Intalco state that the subject facilities have not been altered and the activities will not vary from those permitted by the original Presidential Permit and the activities of BP and Intalco will continue to be consistent with the Commission's previous authorization in this proceeding.

By letter dated May 9, 2003, the Secretary of State, and by letter dated April 5, 2003, the Secretary of Defense favorably recommend that the request for amendment of the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of an amended Permit to be held by BP and Intalco (Permittees) is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953 and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's General Rules and Regulations, permission is granted to the Permittees to operate and maintain the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

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<sup>13</sup>Atlantic Richfield Company and Intalco Aluminum Company, 49 FERC ¶ 61,294 (1989).

Article 1. It is expressly agreed by the Permittees that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application.

Article 2. The following facilities are subject to this Permit:

The 16-inch diameter border crossing pipeline facilities connecting at the United States-Canada international boundary near Sumas, Washington, with the facilities of Westcoast Energy Inc. on the Canadian side of the border and connecting with the pipeline facilities known as the Ferndale Pipeline System on the United States side of the border.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation of natural gas and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The construction, operation, maintenance, and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States for such purposes. The Permittees shall allow officers and employees of the United States, showing proper credentials, of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittees may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittees shall be liable for all damages occasioned to the property of others by the operation or maintenance of the aforesaid facilities and connections, and in no event shall the United States be liable therefor. The Permittees shall do everything reasonable within their power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittees agree to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.



Article 8. Neither this Permit nor the facilities and connections, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities and connections used hereunder by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities and connections authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittees shall maintain the facilities and connection, and every part thereof, in a condition of repair for the efficient operation of said facilities and connections in the transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittees agree that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittees; and in the event that the United States shall exercise such right it shall pay the Permittees just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittees.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittees to any foreign government.

By direction of the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittees this day of \_\_\_\_\_, 2002 have caused their names to be signed by \_\_\_\_\_ [pursuant to a resolution by the duly adopted Board of Directors of BP West Coast Products, LLC] and by \_\_\_\_\_ [pursuant to a resolution by the duly adopted Board of Directors of Intalco Aluminum Corporation] on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, a certified copy of the record of which is attached hereto.

BP West Coast Products, L.L.C.  
Intalco Aluminum Corporation

By \_\_\_\_\_

(Attest)

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Executed in triplicate